



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on January 17, 2007

Date of Meeting: November 28, 2006

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:35 p.m. on Tuesday, November 28, 2006 all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol W. West
Karin Uhlich
Shirley C. Scott
Steve Leal
Nina J. Trasoff
Robert E. Walkup

Council Member Ward 1
Vice Mayor, Council Member Ward 2
Council Member Ward 3
Council Member Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor

Staff Members Present:

Mike Hein
Michael Rankin
Deborah Rainone
Mike Letcher

City Manager
City Attorney
Deputy City Clerk
Deputy City Manager

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Trevor Hubbs, Welcome Baptist Church, after which the pledge of allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup presented Gail Cordy an "Extraordinary Citizen" Award in recognition of being the first woman to receive the Arizona Hydrology Society's Lifetime Achievement Award. He was assisted by Council Member Trasoff.

Deborah Rainone, Deputy City Clerk, announced Susie Rogers, interpreter, would be assisting with anyone in the audience needing Spanish language translation for items listed on the agenda.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 638, dated November 28, 2006 would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Council to report on current events and asked if there were any reports.

- a. Council Member Scott invited the public to attend a Town Hall on Photo Radar Enforcement on November 29, 2006, hosted by the Ward 4 Council Office, along with the Tucson Police Department.
- b. Vice Mayor West announced that on January 4, 2007, Ward 2 would also hold a town hall on Photo Radar Enforcement at East Side City Hall. Vice Mayor West announced the Ward 2 Council Office would be accepting donations for Toys for Tots, the Community Food Bank, and the Diaper Bank. Ward 2 would also be accepting donations of National Geographic Magazine Maps of the Continents that would be distributed to schools in Kenya, as they were in need of school supplies. Maps could be left at City Hall or at East Side City Hall.
- c. Council Member Trasoff announced that on December 6, 2006, the Ward 6 Council Office would have an open house to celebrate one year in office and also to gather community input on issues that were important for the coming year. She encouraged attendees to bring contributions for the Community Food Bank and the Diaper Bank.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 639, dated November 28, 2006, would be received into and made a part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

There was no report.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 645, dated November 28, 2006, would be received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

b. New License

NOTE: There were no applications for regular licenses scheduled for this meeting.

c. Special Event(s)

1. The Tucson Rodeo Committee, Inc., Ward 5
4801 S. 6th Ave.
Applicant: Gary Gene Williams
City T55-06
Dates of Event: February 17, 2007 through February 25, 2007
(To Stage the Annual Tucson Rodeo - La Fiesta de los Vaqueros)
Staff has indicated the applicant is in compliance with city requirements.
2. Order of AHEPA, Chapter #275, Ward 3
1145 E. Ft. Lowell Rd.
Applicant: George A. Makris
City T84-06
Date of Event: December 10, 2006
(Fundraiser)
Staff has indicated the applicant is in compliance with city requirements.
3. Vegetarian Resource Group of Tucson, Ward 3
2990 N. Campbell Ave.
Applicant: Margaret Ellen Raisglid
City T85-06
Date of Event: December 3, 2006
(Meet and Greet Dr. Neal Barnard, a Famous Vegetarian)
Review in Process.

d. Agent Change(s)

NOTE: There were no applications for Agent Changes scheduled for this meeting.

Deborah Rainone, Deputy City Clerk, announced there were no applications for regular licenses scheduled for this meeting. Under item 5c, special events, items 1 and 2 were in compliance with city requirements. Under the item noticed as 5c3, Vegetarian Resource Group of Tucson, the Tucson Police Department had finalized their report and the applicant was now in compliance with city requirements.

It was moved by Council Member Uhlich, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5c1 through 5c3 to the Arizona State Liquor Board with a recommendation for approval.

6. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for any items scheduled for a public hearing. Speakers would be limited to three-minute presentations and the Call to the Audience was scheduled to last for thirty minutes.

- a. Victor Julian Mergard spoke about the Environmental Services fee and his pending lawsuit.
- b. Michael Toney spoke about buffelgrass removal and the Rosemont Mine.
- c. Roy Warden spoke about the Environmental Services fee and the pending lawsuit by Victor Julian Mergard.
- d. Russell Dove spoke about a documentary he created and of a suspected conspiracy theory between China and Mexico to re-conquer the Southwest.

7. CONSENT AGENDA – ITEMS A THROUGH J

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda Items would be received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

- A. FINAL PLAT: (S06-137) ARMORY PARK CONDOMINIUMS SUBDIVISION, 19 CONDOMINIUM UNITS, UNITS 101 THROUGH 119, COMMON ELEMENT “A” AND LIMITED COMMON ELEMENTS “B-1” THROUGH “B-18”
 1. Report from City Manager NOV28-06-642 WARD 6
 2. The City Manager recommends that the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- B. FINAL PLAT: (S06-066) JACINTO PLAZA CONDOMINIUMS SUBDIVISION, UNITS 1 THROUGH 10, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS “A” AND “B”
 1. Report from City Manager NOV28-06-643 WARD 3

2. The City Manager recommends that the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- C. TUCSON CODE: AMENDING (CHAPTERS 11B, 15, 16, AND 27) RE-ESTABLISHING THE ENVIRONMENTAL SERVICES DEPARTMENT AND THE WATER DEPARTMENT AS SEPARATE CITY DEPARTMENTS
1. Report from City Manager NOV28-06-640 CITY-WIDE
 2. Ordinance No. 10348 relating to environmental services; amending Chapter 15 of the Tucson Code, retitling Chapter; amending Tucson Code Article I, Section 15-1 A, providing definition of department and director; amending Tucson Code Article II, Section 15-2 D, establishing the environmental services department, creating the appointive position of environmental services director, providing the functions of the environmental service department; amending Tucson Code sections of Chapters 15, 16, and 27 to conform to the effects of establishing the environmental services department and separating environmental services functions from the Utility Services Department, redefining definition of superintendent of water, and/or director of water, deleting references to utility services director; amending Tucson Code Chapter 11 B, deleting Chapter, entitled Utility Services Department; and declaring an emergency.
- D. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY, MARICOPA COUNTY, AND THE CITY OF PHOENIX FOR THE ARIZONA BENCHMARKING STUDY
1. Report from City Manager NOV28-06-644 CITY-WIDE
 2. Resolution No. 20511 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson, Pima County, Maricopa County, and City of Phoenix for the Cost Sharing Agreement for the Arizona Benchmarking Study; and declaring an emergency.
- E. REAL PROPERTY: VACATION AND SALE OF SURPLUS CITY OWNED PROPERTY LOCATED AT 455 W. KELSO TO LOW INCOME FAMILIES
1. Report from City Manager NOV28-06-647 WARD 3
 2. Ordinance No. 10349 relating to real property; vacating and declaring certain City owned property to be surplus; authorizing the City Manager to execute sales agreements for said property; and declaring an emergency.

- F. MAYOR AND COUNCIL: SELECTION OF A VICE-MAYOR
1. Report from City Manager NOV28-06-648 CITY-WIDE
 2. Resolution No. 20512 relating to the Vice-Mayor of the Mayor and Council; selecting a Vice-Mayor.
- G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE JACKSON EMPLOYMENT CENTER BRIDGES JOB TRAINING PROGRAM FOR HOMELESS MEN AND WOMEN
1. Report from City Manager NOV28-06-650 CITY-WIDE
 2. Resolution No. 20513 relating to Community Services; approving and authorizing execution of an Intergovernmental Agreement with Pima County for the Jackson Employment Center Bridges Job Training Program for Homeless Men and Women; and declaring an emergency.
- H. GRANT APPLICATION: TO THE PASQUA YAQUI TRIBE ON BEHALF OF NATIVE SEEDS/SEARCH
1. Report from City Manager NOV28-06-651 CITY-WIDE
 2. Resolution No. 20514 relating to finance; authorizing and approving a Grant Application to the Pasqua Yaqui Tribe on behalf of Native Seeds/SEARCH; and declaring an emergency.
- I. PARKS AND RECREATION: ADOPTION OF THE TEN YEAR STRATEGIC SERVICE PLAN
1. Report from City Manager NOV28-06-652 CITY-WIDE
 2. Resolution No. 20515 relating to Parks and Recreation; approving the Parks and Recreation Ten Year Strategic Service Plan; and declaring an emergency.
- J. MEMORIAL: IN SUPPORT OF PIMA COUNTY TO RETAIN THE CHICAGO WHITE SOX AT TUCSON ELECTRIC PARK
1. Report from City Manager NOV28-06-653 CITY-WIDE
 2. A Memorial relating to the City of Tucson's support of Pima County to retain the Chicago White Sox at Tucson Electric Park for Cactus League Spring Training.

It was moved by Council Member Scott, duly seconded, that Consent Agenda Items A through J, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal and Trasoff;
Vice Mayor West and Mayor Walkup

Nay: None

Consent Agenda Items A through J were declared passed and adopted by a roll call vote of 7 to 0.

8. PUBLIC HEARING: TUCSON CODE – AMENDING (CHAPTERS 23 AND 23A) THE LAND USE AND DEVELOPMENT COMPLIANCE CODES; RELATING TO FOOD SERVICE AND SPIRITUOUS LIQUOR IN THE C-1 ZONE

Mayor Walkup announced City Manager's communication number 641, dated November 28, 2006, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on proposed amendments to the *Tucson Code*. The public hearing was scheduled to last for no more than one hour, and speakers would be limited to five-minute presentations.

Sherrie Gillespie representing the Arizona Restaurant and Hospitality Association, urged the Mayor and Council to support and adopt the recommendation of the Planning Commission, which was Option B, to eliminate the special exception process and amend it with the mitigation plan. She said Option B answered both the concerns posed by their members, the restaurateurs in Tucson, as well as the residential community. She told the Council they always took into consideration the concerns posed by the residential community, because they were their consumers and the people who patronized their restaurants. They did not want to impede on the residents' rights.

Ms. Gillespie also advised the Council they did review both Option A and Option B, and they testified at the Planning Commission meeting. After reviewing both options, they decided on Option B, as it proved to be the most advantageous for the restaurateurs, as well as the residents. She thanked the Mayor and Council for their diligence in examining Options A and B, and for finding a workable solution for all restaurateurs, as well as for the residents, and urged their support for Option B.

Pat Connors, owner of Pastiche, spoke in support of removing the impedance on businesses. He said he understood that restaurateurs worked with their communities. He personally worked with the community directly behind his restaurant. He said he understood that area residents had to deal with trucks delivering and customers driving

through neighborhoods. They tried to work with the neighborhood to make sure there were no problems. He added that if they start putting limitations or restrictions on them, they would just be limiting business, and they would lose businesses. He told the Council that was not what they wanted to see, and the Council did not want to see that either. They wanted to have a working relationship with the community and the businesses.

Mr. Connors asked that the exemption process be removed, and said from a business standpoint, it made the most sense. He said it made more sense to work with both sides. He thanked the Council for their support.

Anne Stephenson, President of the Udall Park Neighborhood Association, said she was there because she cared about her community and had a special interest towards anything to do with neighborhoods. First, she addressed the neighborhood controversy issue. She said this type of land use would cause a high degree of neighborhood controversy. Complaints and problems were consistently arising; they had in the past and they were continuing to do so. She referred to one case of a restaurant-bar, which was allowed into their neighborhood, over the objections of both the residents, as well as the City land use hearing officer. The restaurant building was about eighty feet from the nearest residence and the parking lot was even closer. Ms. Stephenson stated almost one year later, the privacy wall that was required had yet to be built. She added there were car alarm sounds; and trash was emptied and picked up late and early, very unusual hours when one was trying to sleep. Currently, the parking lot adjacent to their residential neighborhood was being used to store old motor homes, one of which was plugged into power from the restaurant.

Ms. Stephenson also addressed the forum that the State had for objections to specific license applications. She said it had failed to protect their community in the past, and they needed that added insulation in their community that only local government could provide. In the past, she said letters to the Arizona State Liquor Board went unanswered, and a daylong trip to Phoenix had always been a problem.

Ms. Stephenson stated a good business plan factored in all costs, including any anticipated time or financial overruns. The obtaining of a special exception land use was based solely on the business owners' choice of location within the community. Consideration to the existing *Land Use Code* and restrictions should be seen as a requirement to having a solid business plan. She stated the owner, with his due diligence, would be ensuring both a successful business and good rapport with his new and permanent neighbors. The adjacent residential neighborhoods should not be penalized or have their right to object to a local zoning variance removed. She asked that consideration be given to Option A, with the following provisions. The restaurant must first obtain approval from a special exception land use hearing, allowing for the neighborhood input, before the City sends its recommendation to the State. She reiterated that the City should be very clear this should be done before the Council sends its recommendation to the State.

Ms. Stephenson told the Council that each one of them must ask themselves the following question, when making this important decision. If they were approached by someone who wanted to put a restaurant with a full bar, one hundred feet from their residence, what would the requirements be that they would want the business to meet. She said they would not want a restaurant with a full bar to be licensed.

Bonnie Poulus stated she was there representing herself, but was speaking to the Council with over twenty years of experience dealing with land use planning, neighborhood issues, and trying to find ways that, as neighbors and residents, they could support land use changes in their neighborhoods. She hoped that when the Council read over their material, each member of the Council asked the question, "why was a liquor license requirement for a restaurant put in as a special exception in the C-1 Zone." She told the Council that if they looked at the issues dealt with as neighborhoods when establishments serve alcohol, they would see that the serving of alcohol in the C-1 zone was actually a far more intense use within the C-1 zone than almost any other business allowed to operate in the C-1 zone.

Ms. Poulus stated the State decided they wanted to hold all of the cards when it came to issuing a liquor license. The reality was they did not live in her neighborhood and they did not live in the City of Tucson. What the City needed to do was to find ways for the integrity of neighborhoods to be protected. She asked the Council to support what was known as Option A. She said the biggest change to what the Council was seeing from the City Manager's Office was in Section 3.5.4.7.K. That would require any restaurant in the C-1 zone to go for a special exception. The public would then be provided with an open forum to present the pros and cons of why they would want a restaurant in the C-1 zone, and to get concessions from those wanting the uses, as to whether or not they would serve alcohol, whether or not there would be hours of operation. If they were to undergo a rezoning, say R-2 to C-1, they could stipulate hours of operation. They were not allowed to stipulate the type of uses, but they could stipulate that any use would have to stop at 10:00 p.m. That meant that most restaurants serving alcohol would be closed by 10:00 p.m., and would not become the lounge kind of situation that they saw in a lot of restaurants that were open from 10:00 p.m. to 2:00 a.m., which was now the allowable time with which alcohol could be served in the State of Arizona. The neighborhoods would then not have the problems necessarily associated with it.

Ms. Poulos said the reality was C-1 zoning existed near residential neighborhoods and often they did not go through a rezoning process when someone wanted to build there. The special exception use for restaurants in the C-1 zone would recognize the higher intensity use than the restaurant would now have, because of the State's decision that the City could not regulate liquor licenses the way they had in the past.

Ms. Poulos also pointed out that with the passage of Proposition 207, there was a big question mark about how much they could regulate and what new zoning restrictions they could put on businesses. She urged the Council to look at Option A, go forward with requiring the special exception, come back in a year and look at it. They would not

be able to make it stricter if Proposition 207 was upheld in the courts. However, if it was passed now and it turned out that it was too restrictive, there would not be a problem under Proposition 207 in trying to change it. She urged the Council to give neighborhoods the ability to support C-1 zoning, stating it would be very difficult for them to support C-1 zoning, if they did not have any say in how or whether or not alcohol was served within that zone.

Colette Altaffer, member of the Neighborhood Infill Coalition, representing herself, commented that it seemed like every time they turned around, it was getting harder to protect neighborhoods. She said alcoholic beverage service was a classic example of that. First, the State extended the hours of operation from 1:00 a.m. to 2:00 a.m., then they changed the sales ratio from a 40-60 ratio to a 30-70 ratio. Now this item was being discussed. She said that while staff had looked at this from the perspective of the businesses, how many existing businesses or existing restaurants would become nonconforming uses, under Option A, or even Option B. No one bothered to look and ask how many neighborhoods would be impacted if Option B was passed. Her neighborhood had at least two parcels that were zoned C-1, and currently neither one had a restaurant or a restaurant with a bar. The parcels sat on an intersection, which meant they had the potential, should a restaurant move in there with a bar, to impact at least four neighborhoods apiece. She said that nobody bothered to count how many neighborhoods would be impacted and compare that with the forty five restaurants that they say would be impacted if they passed Option A.

Ms. Altaffer also stated staff tried to compare what went on in the City with what went on in the County. There were two big exceptions. First of all, she said there was a neighborhood near her, that when a restaurant went in, the restaurant owner told the neighborhood not to worry, their restaurant was a high end restaurant and they would not get students in there. The next thing the neighborhood knew, they were finding ads in the *Daily Wildcat* for two-for-one drink specials from that very restaurant. The County did not have that problem, because they were located too far away from the University. Second of all, many of the neighborhoods that existed in the County were planned neighborhoods and the developers wrote deed restrictions. They were able to put protections in there for their residents, which existing neighborhoods within the City did not have. They were totally reliant on the *Land Use Code* to protect their quality of life.

Ms. Altaffer said she recently had a friend who said something to a high level official within the City, that they should require all high level management, including the City Manager, to live within the City limits. After all, they should have to live with the consequences of the laws they proposed. That friend was told that they could not do that. If they did, they would never be able to attract the high caliber of people that they were currently able to attract.

Ms. Altaffer asked what did that tell them about the kind of quality of life that existed in the community, if the people proposing these laws were not willing to live under them. Ms. Altaffer urged the Council to support Option A, because it gave neighborhoods the best level of protection. Also, because of Proposition 207, the City

could not put those protections back in place if they lessened them. They could always be removed, but they could not be put back. She urged the Council to support Option A, and make a commitment to the neighborhoods in the community that quality of life really did count.

Tracy Williams told the Council that neighbors should have a voice in the City's development review process. Neighbors cared about their community and they cared about who moved in, and how businesses conducted themselves. She said they did not want to put them out of business, they just wanted to deal with the issue of compatibility. By going to the Zoning Examiner, that provided a structured avenue for every one, business owners, neighbors, and staff. They all got a chance to sit down and iron out the details. Policies that the Council could vote on, like Option A which they encouraged, would be a helpful guide for staff in their every day enforcement of the *Land Use Code*. Ultimately, the Mayor and Council would make the final recommendation to approve the land use and zoning applications. More public input would result in better development. She re-emphasized that more public input would result in better development. Neighbors hoped that they would give neighborhoods this important protection. This was the last chance they had to enact legislation that would protect neighborhoods.

Ms. Williams stated when Proposition 207 was signed into law, they would not be able to go back. They could only go forward. As neighbors, they hoped the Council would give them the support and protection, and added the Council could always review it in one year if it did not work.

Oscar Bojorquez said he was there to urge the Council to support Option A. He had lived in his Ward 3 neighborhood for fourteen years. He was the current president of the Miracle Manor Neighborhood Association, but was there to speak on his own behalf. They had a couple of investors try to invest in the Farmer John's building, one trying to make it a restaurant. After that investor came to one of their meetings and presentations, they had a handful of questions, and the potential investor could not come up with good answers. As time went on, the investor withdrew his liquor license application for the building and he lost interest in the facility. He said the Tucson Police Department started harassing him, as he owned another business, the Keys West on Oracle.

Mr. Bojorquez said they had another individual come in from City Limits East, and he wanted to create a venue. The individual planned to put a big wall behind the existing wall, which was probably historical. He also went to the neighborhood meetings, did presentations, but it did not pan out for him. He had too many legal problems. The traffic issues came up, because they wanted to put seating in there for three thousand people. This location was at Grant and Flowing Wells and it was not designed for the traffic that he wanted to come in and out of there. All the traffic that was going to exit, after a nice concert and people were feeling good, would be forced into their neighborhood. Mr. Bojorquez said he was there speaking on his own behalf and urged the Council to vote for Option A, and let their neighborhoods have a say in what they wanted to have border their neighborhoods.

James Quinn, a member of the Miracle Manor Neighborhood Association, stated he had been a resident of Tucson since 1966. He said he was a bit of an activist. The proposed change was brought to their attention through the Ward. Mr. Quinn said they had a lot of problems. As Mr. Bojorquez noted about the Farmer John building, there would have been problems with parking and the Police Department was telling them of people traveling through the neighborhood to get in and out. He said it would have been a disaster, and it was presented like a bed of roses to them. Mr. Quinn stated that businesses had their agenda and a lot of times the neighborhoods had another agenda. They wanted to keep the neighborhood a peaceful place to live. They wanted a quality lifestyle. If their input was taken away, their hands would be tied behind their backs for business. He said he had his own business, and was not against businesses. However, when they want to put liquor and people drinking, there needed to be input from the neighborhood. He urged the Council to consider that and asked them not to take away their right to make a decision on things that would affect their life and their lifestyle.

Mayor Walkup said that was the last speakers card he had on this item. He asked for a motion to close the public hearing.

It was moved by Council Member Trasoff, duly seconded, and carried by a voice vote of 7 to 0 to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10347 by number and title only.

Ordinance No. 10347 relating to planning and zoning; amending Tucson Code, Chapter 23, *Land Use Code (LUC)* Article II, Zones, Division 5, Commercial Zones; Article III, Development Regulations, Division 5, Performance Criteria; Article VI, Definitions, Division 2, Listing of Words and Terms, clarifying the allowance of alcoholic beverage service; amending Tucson Code, Chapter 23A, the Development Compliance Code, Article II, Division 3; and setting an effective date.

Vice Mayor West said she had a number of questions about staff's report, which she found very confusing. It appeared to her that the Planning Commission had recommended both Option A and B, yet when she looked at what they had recommended, they preferred the Council look at Option B, and make some changes to that, to give more public input and notice. After listening to some of the speakers, and she thanked those who spoke, she was concerned that Option A did not seem to fix the problem.

Vice Mayor West explained what they thought the problem was. There was a singing waiter's restaurant that wanted to open up in Ward 2. It caused considerable controversy in the neighborhood, and she believed that ultimately it was sent to the Arizona State Liquor Control Board with a "no recommendation". As a result, a public hearing was held. The property was C-1, and it was allowed. In the meantime, the owner decided he wanted to serve liquor in addition to serving beer and wine. She remembered that it went before the Zoning Examiner, because of the special exception land use. The Zoning Examiner recommended denial based on the testimony of Ms. Stephenson and

many of her neighbors. The applicant, Mr. O'Shaughnessy, then decided to appeal the Zoning Examiner's decision to the Mayor and Council. Vice Mayor West said she cautioned both sides that she could not speak with them about it. The day of the hearing, she learned that they could not do anything about it, and asked the City Attorney why that was the case.

Michael Rankin, City Attorney, told the Council that Vice Mayor West's recitation of the history was correct. The reason they were discussing this item was that the current codes required the special exception process for approval of a restaurant in C-1 that desired to serve hard alcohol in addition to beer and wine. While that appeal to the Mayor and Council brought that issue to a head and revealed the fact that the existing *Land Use Code* was in conflict with and preempted by State law in a number of respects, it was unenforceable. When advised of that, the Mayor and Council had no choice but to approve the requested appeal, and give direction to staff to fix the *Code*. That was what had been going on since that time.

Mr. Rankin explained that different alternatives were proposed to the Planning Commission, as had been described, and Option A and Option B were proposed. The Planning Commission recommended the adoption of Option B, with an additional recommendation that the *Development Compliance Code* be amended so that there was an enforcement mechanism in place to enforce the mitigation plan that would be required under Option B. The mitigation plan in question would have set conditions regarding the land use impacts of the use, the noise, the lighting, the screening, and the buffering from the neighborhood, etc. It would not, and could not, because again of preemption by State law, regulate such conditions as hours of alcohol sales or types of alcohol that could be sold in an establishment. Mr. Rankin stated that really was what was at issue and what made the current *Code* provisions deficient. State law and the approval process for the issuance of liquor licenses exclusively governed those areas, what types of liquor license could be sold under a particular type of license, what hours of liquor sales could be, etc. The City could not regulate those things through the *Land Use Code* provisions.

Vice Mayor West asked if it was not true that in C-1, with a series 12, the establishment could serve hard alcohol in addition to beer and wine, and asked if that was part of the issue as well.

Mr. Rankin replied that was right, because the *City Code* says you could not, without special exception. However, that part of the *Code* was unenforceable and preempted by State law, so the City could not enforce it. By default, yes, if they had a Series 12 liquor license, they could sell any type of alcohol in that establishment.

Vice Mayor West stated if one thought about a restaurant, one would go in there and expect to have a margarita. She suspected that some of those establishments were in a C-1 zone. She asked if Option A did anything. She referred to the testimony heard earlier for Option A, and felt they made a false promise to the public. In looking at Option A, it did not seem to her that it would fix the problem, and asked the City Attorney if she was right.

Mr. Rankin said it would resolve some of the conflicts between the existing *Codes* and State law, particularly with respect to the definition of a restaurant and/or the hours of liquor sales that were permissible. It would recognize that those were governed by State law. Mr. Rankin said Option A as presented to the Planning Commission would have retained a special exception requirement for any restaurant that would serve alcohol, without making a distinction between beer and wine and hard liquor. It would have just extended that requirement to any alcohol sales. Regarding the question of whether or not such an option be adopted and not be preempted, he said it was possible. However, he added, even if the City went through that process and there was a hearing in front of the Zoning Examiner, he could not impose the types of conditions that were being raised. He could not impose conditions saying the establishment could not serve alcohol, they could only serve beer and wine. He could not impose a condition saying they could not serve alcohol after a certain time. Those things would still be governed by State law. While the City could impose that process, it would not provide the relief that would be expected by the individuals engaging in the process.

Vice Mayor West said that was why they all felt frustrated about it, and perhaps this was something that should be included in their legislative agenda, to try to find some way to protect neighborhoods from these changes. She said someone else brought up deed restrictions in the County, and said that deed restrictions could not be enforced by government. She asked the City Attorney if that was correct.

Mr. Rankin replied that was correct, they did not enforce deed restrictions.

Vice Mayor West stated that had to be between the entity and the neighborhood.

Mr. Rankin agreed that would be a private relationship outside of the City's involvement.

It was moved by Vice Mayor West, duly seconded, to send this item to a Study Session so the Mayor and Council could work things out. She was inclined towards Option B, because she did not think they could do Option A. She wanted some noticing requirements and some input. She thought the way to do this would be to hold it and get some input from the neighborhoods on how to put a provision in place to require a mitigation plan for all new restaurants. Vice Mayor West stated she thought existing restaurants should be grandfathered in, but felt there had to be an amendment to the *Development Compliance Code* that would ensure enforcement of the mitigation plan.

Vice Mayor West said she did not want to make any false promises to anyone, and go through what they went through in the past with the case she mentioned earlier. The best way to take care of this would be to bring it to a Study Session with some recommendations for the mitigation plan and to explore an amendment to the *Development Compliance Code* that would ensure enforcement of the mitigation plan.

Mr. Rankin clarified that what the Council had before them, they took from the direction of the Planning Commission. They included for the Council's consideration an amendment to the *Development Compliance Code*, which would create that enforcement mechanism, under which if the terms of the mitigation plan are violated, then it would be enforceable through the traditional zoning enforcement mechanism, which was notice of violation. If one then failed to come into compliance, a citation would follow, with one of the possible sanctions being the suspension or revocation of the permitted use.

Vice Mayor West asked if this would be affected by Proposition 207.

Mr. Rankin replied that under its own terms, Proposition 207 would exempt from its scope land use regulations that were related to liquor control.

Council Member Uhlich said it was not clear to her that the Planning Commission did address it, and wanted to reemphasize that the Planning Commission seemed to be focusing on enforceability. The other concern with Option B, was public input. She said they have had conversations with staff and they were trying to come up with some opportunity to integrate that in, so that there would be some noticing and input opportunity on a mitigation plan that would not route this into the Zoning Examiner process, which could take months. It might not be enforceable, but it would still give neighbors notice of the request and also an opportunity for input and have that come to the Council as part of the application process. Therefore, if this issue was addressed further, and she felt that would be wise, that would be another thing she would want to make sure they did.

Council Member Uhlich also had a question about liquor license requests, and asked if this would fall under a new application or a change to an application, for a restaurant to request to go from beer and wine to hard liquor.

Mr. Rankin replied it was important to remember there were two separate processes. There was the application for liquor licenses, which the Council was familiar with, which went through the Mayor and Council for a recommendation and then to the State. Then there was the Zoning approval process, which was what this would address, to the extent that there would be changes to the *Land Use Code*. They would only apply prospectively, which was something Vice Mayor was referring to, in terms of whether it should go back and deal with existing restaurants.

Council Member Uhlich said that in this case they would tie the two together. They would have an application track the zoning and mitigation plan process, so that it would come to the Council at the same time. She asked the City Attorney if her understanding of how it would get processed was correct. If a restaurant wanted to change in order to sell hard liquor, the application and the mitigation plan would come to the Council at the same time.

Mr. Rankin replied that if the restaurant already had a restaurant liquor license, they did not need to submit a new license application. That would already allow them to

sell liquor in addition to beer and wine. If it was a completely new use, and they were looking for a new location, they would be subject to both the zoning requirements and the liquor license requirements. So, in that instance, they would be tracking each other.

Council Member Uhlich asked, in the case of a new liquor license application and a mitigation plan, the two parallel tracks, on the application itself, if the criteria would be the same for a restaurant as for other types of liquor licenses. She asked if the restaurant would have to demonstrate that the public needed it for its convenience.

Mr. Rankin stated a series 12 liquor license would be subject to both of those statutory requirements, that the applicant had the capability, qualifications, and reliability to hold the license, and that the location would serve the public convenience and necessity, which would get into the location and saturation issues.

Council Member Trasoff said she shared the frustrations she heard, but she also listened to someone like Mr. Connor who was a very responsible restaurateur, who worried about his neighbors. She agreed this issue should be scheduled for a Study Session to have more time. She did not want to approve one option, just because it sounded good. She did not want to say they should go for Option A because that would put a hearing in, if it was not enforceable. What she wanted was to make sure there was something that had teeth in it that would actually protect the neighbors and the neighborhoods, but also would give a fair hearing to the businesses. She agreed with Tracy Williams' comment that "more public input would result in better development" to a point, where they did not have businesses going on and on and could never have a decision made.

Council Member Trasoff wanted to clarify that if one of the Options was passed, it would be a zoning issue, a *Land Use Code* issue. It would in no way interfere with the liquor license application. Therefore, if it would pass in some form, a new restaurant would still have to come to the Council and go through all of the hoops they did now to prove public convenience. That would still give the Council the powers they have exercised several times, when an area was saturated. She said another thing that was important for her was the hammer about being able to rescind the zoning use, if they failed to live up to the mitigating issues that would have to be worked out with the neighborhood. If the business did not live up to everything, then the use could be rescinded. It would have nothing to do with the liquor license, because the City did not have the power to do that, but the City could rescind the use. She asked the City Attorney if that was accurate.

Mr. Rankin replied that both statements were accurate.

Council Member Trasoff stated then with that hammer, it would give them control. Her only concern was how long it sometimes took to impose the hammer, how many weeks and/or months would it take. They wanted to give someone a fair opportunity to come into compliance, but not at the expense of neighbors who had to endure it while it was going on.

Mr. Rankin said certainly there was time involved in the enforcement process. A notice of violation would be issued, and the violator would have an opportunity to appeal. It was a due process right to appeal to the Board of Adjustment. If that option was exercised, there would be a time period for scheduling that hearing and resolving it. If they chose not to appeal, or if they were unsuccessful in their appeal, then it could move to the citation stage. It would then end up in court, and that would be a time process as well.

Council Member Trasoff said when this comes back to Study Session, she wanted staff to bring back those timetables. She said her concern, even though that was put in, was how long it would take to go through the mitigation and the fact that there were ways to circumvent the best intentions of the law, of helping with the mitigation, or remediate; and then having to start the process all over again. She felt that was not fair to the neighbors, and for highly ethical businesses; it would not be relevant to them. She said they would also have to account for those they had to take those steps with, that they could not trust.

Vice Mayor West commented that Council Member Ibarra reminded her of something very important. She asked if staff could get together with both the restaurant association and the neighborhoods before this item came back to Study Session, just to get some input. She felt that was very important. There were two sides to the issue, but they wanted to make sure the neighborhoods were protected and the restaurants were allowed to operate.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a voice vote.

The motion to send this item to Study Session was carried by a voice vote of 7 to 0.

9. PUBLIC HEARING: ZONING (C9-01-15) QURESHI – QUEEN AVENUE, P TO R-2, REQUEST FOR REACTIVATION AND TIME EXTENSION, ORDINANCE ADOPTION

Mayor Walkup announced City Manager's communication number 649, dated November 28, 2006, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on a request to reactivate and allow a five-year time extension for property located on the northwest corner of Queen Avenue and Speedway Boulevard. He asked if the applicant was present and if they wanted to make any comments before beginning the public hearing. He said the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations.

The applicant had no comments.

Mayor Walkup asked if there was anyone in the audience wishing to address the Council on this item.

There was no one.

It was moved by Council Member Uhlich, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10350 by number and title only.

Ordinance No. 10350 relating to zoning: amending Ordinance No. 10216 to extend the period of compliance from September 17, 2006 to September 17, 2011, for the area located at the northwest corner of Speedway Boulevard and Queen Avenue in case C9-01-15, Qureshi – Queen Avenue, P to R-2; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, to reactivate the rezoning case and approve a five-year time extension, and pass and adopt Ordinance 10350.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, Uhlich, Scott, Leal, and Trasoff;
Vice Mayor West and Mayor Walkup.

Nay: None

Ordinance 10350 was declared passed and adopted by a roll call vote of 7 to 0.

10. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Walkup announced City Manager's Communication number 646, dated November 28, 2006, would be received into and made a part of the record. He asked if there were any personal appointments to be made.

There were no personal appointments.

11. ADJOURNMENT 6:46 p.m.

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, December 5, 2006, at 5:30 p.m. in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 28th day of November, 2006, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

KSD:sac:dsc